

RESOLUTION NO.

A Resolution of the Planning Commission of the City of San José granting, subject to conditions, a Conditional Use Permit and a Site Development Permit to allow for the continued land use of a wireless communications facility in addition to the removal and replacement of an existing 45-foot tall wireless wood pole and antennas with upgraded equipment on an approximately 4.19-gross acre site, located on the southside of Singletree Way, approximately 430 feet east of Camden Avenue (1552 Singletree Way).

FILE NO. CP19-022

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on June 22, 2019, an application (**File No. CP19-022**) was filed by SAC Wireless, on behalf of AT&T, with the consent of the property owner PG&E, with the City of San José for a Conditional Use Permit and a Site Development Permit to allow for the continued use of a wireless communications facility in addition to the removal and replacement of an existing wood wireless pole and antennas with upgraded equipment on an approximately 4.19-gross acre site, on that certain real property situated in the A Agricultural Zoning District and located at the southside of Singletree Way, approximately 430 feet east of Camden Avenue (1552 Singletree Way, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A" entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a Public Hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the City’s Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a plan for the subject property entitled, “LTE 3C, 4C, 5C, 6C 4TXRX Antenna Retrofit” dated received February 13, 2020, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the Planning Commission was conducted in all

respects as required by the San José Municipal Code and the rules of this Planning Commission; and

WHEREAS, this Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE THAT:

After considering evidence presented at the public hearing, the Planning Commission finds that the following are the relevant facts and findings regarding this proposed project:

1. **Site Description and Surrounding Uses.** The subject 4.19-gross acre site is located within an existing PG&E Substation, which leases space to AT&T for the existing wireless communications facility.

The project site is a roughly rectangular lot bordered by Singletree Way, a school, and baseball fields to the north, a residential neighborhood to the west, Guadalupe Creek to the south, and power transmission lines to the east. More specifically, the existing wireless wood pole monopole is located in the southeast corner of the substation away from the primary equipment and structures, approximately 45 feet from the riparian edge of Guadalupe Creek and approximately 214 feet to the south of Singletree Way. No trees would be removed as part of this project.

2. **Project Description.** The project would allow the continued use of a wireless communications facility on the site of an existing PG&E Substation. The project would also consist of the removal an existing 46-foot high wireless wood pole and associated equipment and the construction of a 45-foot high wireless wood pole and associated equipment on an approximately 4.19-gross acre site.

The existing wireless facility was approved through a Conditional Use Permit (File No. CP99-047) on January 25, 2000. The new wireless wood pole and associated equipment would be located in the southeast corner of the site, approximately 6 feet to the northeast of the existing wood pole. The wood pole would include 12 mounted antennas and 18 Remote Radio Units (RRUs), in addition to associated ground equipment. No trees would be removed as part of this project.

3. **General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Public/Quasi-Public. This category is used to designate public land uses, including schools, colleges, corporation yards, homeless shelters, supportive housing for the homeless, libraries, fire stations, water treatment facilities, convention centers and auditoriums, museums, governmental offices and airports. Joint development projects which include public and private participation - such as a jointly administered public/private research institute or an integrated convention center/hotel/restaurant complex - are allowed. This category is also used to designate lands used by some private entities, including private schools, daycare centers, hospitals, public utilities, and the facilities of any organization involved in the provision of public services such as gas, water, electricity, and telecommunications facilities that are consistent in character with established public land uses. The existing use on-site is a PG&E Substation with an ancillary Wireless Communications Facility use. This Conditional Use Permit would allow for the continued use of a Wireless Communications Facility.

The project is consistent with the following General Plan Policies:

Telecommunications Goal IN-6: Support the provision of state-of-the-art telecommunication services for households, business, institutions, and public agencies throughout the city to foster fiscal sustainability, an innovated economy, support environmental leadership, meet the needs of quality neighborhoods and advance other Envision General Plan goals.

Telecommunications Policy IN-6.1: Work with service providers to ensure access to and availability of a wide range of state-of-the-art telecommunication systems and services for households, businesses, institutions, and public agencies throughout the city.

Analysis: The project facility would provide state-of-the-art wireless telecommunication services to consumer and business customers by providing next-generation data products, thereby supporting the above goal and policy, including enhanced network connections without interruption and high speed internet for a better overall network experience. The project will enhance the area's public safety infrastructure by providing wireless communication services to the surrounding neighborhood businesses and the local community.

Community Design Policy CD-4.12: For structures other than buildings, and including structures on top of buildings, such as solar panels, other energy-saving or generating devices, roof landscaping, steeples, bell towers, and wireless communication antennae, where substantial height is intrinsic to the function of the structures, consider heights above those established for structures in the area. Locate such structures to minimize public visibility and avoid significant adverse effects on adjacent properties. Incorporate visual amenities, such as landscaping, to offset potential adverse visual impacts.

Analysis: The wood pole would be removed and replaced approximately six feet to the northeast of the existing wood pole. The existing and new pole would be set back approximately 280 feet from the nearest residential property to the west and approximately 214 feet from Singletree Way to the north. The perimeter of the site is landscaped to the north, east, and west. The pole would be minimally visible from Singletree Way. Therefore, the project would not result in significant adverse visual effects to the adjacent properties.

4. **Zoning Ordinance Compliance.** The project conforms to the development standards as set forth in the A Agricultural Zoning District. The project parcel is located on a 4.19-gross acre site within the A Agricultural Zoning District. Wireless Communication Antenna are allowed within the A Agricultural Zoning District with the approval of a Conditional Use Permit.

Development Standards

Setback	Required (minimum feet)	Project
From abutting streets and highways	50 feet	214 feet
From abutting property zoned or used for residential purposes	300 feet	280 feet (existing)
From abutting property zoned or used for other than residential purposes	50 feet	77 feet

Within the A Agricultural Zoning District, buildings and structures are required to be setback minimum 50 feet from abutting streets and highways, 300 feet from property zoned or used for residential purposes and 50 feet from abutting property zoned or used for other than residential purposes. The existing and new wireless monopole would be setback approximately 214 feet from Singletree Way, the nearest street to the north. The wireless monopole would be setback approximately 280 feet from the nearest residential area to the east and approximately 77 feet from the nearest non-residential property to the east. As the wireless monopole would be setback from the nearest residential area less than the required 300 feet, a Setback Exception is required.

Setback Exception

Pursuant to Section 20.20.230 of the San José Municipal Zoning Code, the Director may grant a reduction in the minimum required setback from an abutting property zoned or used for residential purposes for additions to existing structures or new structures on a lot located in either the A-Agricultural or OS-Open Space Zoning District if the Director finds that granting the reduction in the minimum required setback would not impair the utility or value of adjacent property or the general welfare of the neighborhood and, in addition, finds that the proposal meets all of the following criteria:

- a. The subject site or lot:
 - i. Is located adjacent to a residentially zoned property or is located next to a residential use; and
 - ii. Has substantial existing development on the subject site; and
- b. The sizes of any and all additions or structures to be added to the subject site or lot shall not exceed fifty percent of the square footage of the existing structure on the subject site or lot and for which development permits were obtained prior to February 19, 2001; and
- c. The aggregate total square footage of all additions or new structures to be added to the subject site or lot shall not exceed fifty percent of the square footage of the existing structures on the subject site or lot as of February 19, 2001; and
- d. Any addition or structure to be added to the subject site or lot shall not significantly diminish the existing legal nonconforming setback, and, in any event, no addition or structure to be added to the subject site or lot shall reduce a setback to less than fifty feet; and
- e. Any new addition or structure shall not exceed the height of existing structures located on the subject site or lot, or the maximum height allowance established pursuant to this title for the Zoning District, whichever height is less.

Analysis: The subject site is located adjacent to residentially zoned property to the west. The wireless wood pole would be located approximately 550 feet to the west of the adjacent residential property line. However, the nearest residential area is located approximately 280 feet to the east of the wireless wood pole across the existing power transmission lines, therefore a setback exception is required. The existing site is substantially developed as it is located within an existing PG&E Substation. The site was permitted and has existed as a wireless communications facility since 2000. This Conditional Use Permit would allow the continued operation of a wireless communications facility in the same location. The maximum height of the existing wireless wood pole is approximately 48 feet. The proposed wood pole would have a maximum height of approximately 45 feet. Therefore, the square footage of the new structure would not exceed fifty percent of the existing structure on-site and the height of the new pole

would not exceed the existing height of the existing pole. As previously stated the new wireless wood pole would be setback approximately 280 feet from the existing residential area to the east, meeting the maximum 50 feet requirement for the setback exception.

Height

The maximum height of the wireless wood monopole would be 45 feet high. The maximum height allowed in the A Agricultural Zoning District is 35 feet. However, Section 20.85.030 of the San José Municipal Code for Specific Use Height Restrictions allows a height of up to 150 feet for wireless communications antenna on sites with nonresidential or non-urban land use designations and meeting specific criteria, as listed below.

- a. The site, structure, and related use are located or constructed to minimize public visibility;

Analysis: The 45-foot high wireless wood pole would be located approximately 77 feet from the nearest property line to the east and approximately 214 feet from the nearest street to the north. The nearest residential area is approximately 280 feet to the west of the site. The perimeter of the site is surrounded by existing trees and vegetation. Therefore, the project would not result in any significant adverse visual affects to adjacent properties.

- b. The project provides visual amenities, such as landscaping, to address and offset the visual impacts associated with the project use and related structures; and

Analysis: The perimeter of the site is surrounded by existing trees and vegetation on all sides, except for the curb cut where the entrance to the PG&E Substation is located. A letter from PG&E dated May 28, 2020 states that landscaping would not be allowed on-site for safety reasons. The wood pole is located on the property of an existing substation, which requires free and clear access to utility facilities and transmission lines. No obstructions such as landscaping or trees would be allowed on-site for safety purposes. However, the exterior perimeter of the site is well landscaped and would therefore offset the visual impacts associated with the project use and related structures.

- c. The decision-maker reasonably determines that there is substantial evidence that technical necessity requires greater height, and, in the case of cellular facilities, the increased height will result in a reduction in the number of existing or future freestanding wireless communications antenna.

Analysis: The 45-foot high wireless wood pole is designed to have enough height and volume to meet the coverage needs of the surrounding area. Based on the Alternatives Analysis prepared by SAC Wireless dated June 3, 2020 , a minimum height of 43 feet is necessary for the equipment to function as anticipated to meet AT&T's service objective in the area. The project would include 12 panel antennas and 18 RRUs. This amount of equipment would need to be stacked vertically. This type of equipment installation requires substantial spacing on the tower.

The project, therefore, meets the criteria for Section 20.85.030 for Specific Use Height Restrictions allowing 150 feet for freestanding telecommunications antenna and, thereby, complies with the maximum height allowance in the A Agricultural Zoning District.

Parking

Wireless communication antenna requires one parking space per site and the project provides one vehicle parking space. The project complies with this parking requirement.

Noise

The maximum noise level in decibels at the property line for an open space or agricultural use adjacent to a property used or zoned for residential purposes is 55 decibels. The operation of the site does not include any noise generating equipment or activities. No backup generators would be approved through this Conditional Use Permit. The nearest residential property is approximately 280 feet to the east across the power transmission lines. As the project is located within 500 feet of a residence, construction activities would be limited to between 7:00am to 7:00pm Monday through Friday as conditioned in this Conditional Use Permit.

5. **City Council Policy 6-20: Land Use Policy for Wireless Communication Facilities**

As stated in the City Council's Land Use Policy for Wireless Communication Facilities (Council Policy 6-20), San José has a strong interest in achieving and maintaining a high level of wireless communication service availability for businesses and residents. However, visual impacts and residential interface concerns can result from the development of wireless communication facilities. The purpose of the policy is to identify criteria to minimize and appropriately locate wireless communications antenna facilities. Per the analysis below, the proposed project is consistent with the policy requirements:

- a. Prior to the construction of a new wireless communication facility, an alternative analysis should be prepared to identify alternatives that reduce visual impacts.

Analysis: In accordance with Council Policy 6-20, an alternatives analysis entitled, "AT&T Alternatives Analysis Report" prepared by SAC Wireless was submitted on June 3, 2020. The analysis considered multiple alternative sites for wireless colocation located within a ¼ mile radius of the existing site. The only location that would meet the height requirements for service was the existing PG&E transmission towers adjacent to the substation to the east. However, the transmission towers would be located within 20 feet of residential properties and would increase visibility of the wireless facility within the neighborhood. The alternatives analysis also considered possible building mounted locations; however there were no locations within the ¼ mile radius that would meet the height requirements for service.

- b. New wireless facilities should be located and designed to minimize public visibility and that ancillary equipment should be adequately screened and landscaped to minimize potential for graffiti vandalism.

Analysis: As previously stated, the 45-foot high wireless wood pole would be located approximately 77 feet from the nearest property line to the east and approximately 214 feet to the nearest street to the north. The nearest residential area is approximately 280 feet to the east of the site. The perimeter of the site is surrounded by existing trees and vegetation, further screening the wood pole from view of the surrounding neighborhood. The site would be located within a fenced PG&E Substation and would only be accessible to authorized personnel.

6. **Riparian Corridor Policies.** The project site is located approximately 45 feet to the north of Guadalupe Creek, and is therefore subject to and complies with City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design and the Riparian Corridor Policy Study. A Biological Resources Assessment was prepared by Rincon Consultants on January 21, 2019. The Biological Resources Assessment found that there is no reasonable alternative which avoids or reduces the encroachment into the setback area. The project would replace existing utility structures within the

same footprint. The reduced setback will not significantly reduce or adversely impact the riparian corridor as project activities will only impact existing developed areas.

City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design

The purpose of City Council Policy 6-34 Riparian Corridor Protection and Bird-Safe Design (Council Policy 6-34) is to protect, preserve, or restore riparian habitat and limit the creation of new impervious surface within riparian corridor setbacks to minimize flooding from urban runoff, and control erosion. Under Council Policy 6-34, the project is considered a “riparian project,” as it is a development located within 300 feet of a riparian corridor’s top of bank or vegetative edge, whichever is greater, and pursuant to the City’s Zoning Ordinance requires approval of a Development Permit. The project includes a reduced riparian setback from the recommended 300 feet and is therefore subject to the following findings:

- a. There is no reasonable alternative for the proposed Riparian Project that avoids or reduces the encroachment into the Setback Area.
- b. The reduced setback will not significantly reduce or adversely impact the Riparian Corridor
- c. The proposed uses are not fundamentally incompatible with riparian habitats
- d. There is no evidence of stream bank erosion or previous attempts to stabilize the stream banks that could be negatively affected by the proposed development within the Setback Area.
- e. The granting of the exception will not be detrimental or injurious to adjacent and/or downstream properties.

Analysis: The project site is located approximately 45 feet north of the nearest riparian canopy as identified by the Biological Resources Assessment Report prepared by Rincon Consultants on January 21, 2019. The Biological Resources Assessment found that there is no reasonable alternative which avoids or reduces the encroachment into the setback area. The project would replace existing utility structures within the same footprint. The reduced setback will not significantly reduce or adversely impact the riparian corridor as project activities will only impact existing developed areas. The Assessment found that there is no evidence of stream bank erosion or previous attempts to stabilize the stream banks which could be negatively affected by the development. The project would not require trimming or removal of any riparian vegetation and all ground-disturbing activities would occur at a minimum 45 feet from the riparian canopy. The project would not increase the amount of impervious area on the project site, and therefore poses no additional threat from erosion to downstream resources.

7. Environmental Review.

Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), the Conditional Use Permit is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. CEQA Guidelines Section 15303 applies to repair, maintenance, and minor alterations of existing public or private facilities and structures that involve a negligible or no expansion of the existing use. Specifically, CEQA Guidelines Section 15303(d) applies to water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

Telecommunications Act of 1996. This Federal law contains provisions concerning the placement of antenna structures and other facilities for use in providing personal wireless services. As required by this law, the Federal Communications Commission (FCC) adopted guidelines for environmental RF emissions. These guidelines apply to all transmitters licensed or authorized by the FCC, including antennas licensed to wireless service providers and the cellular telephones used by subscribers to the service. The guidelines are based upon recommendations of federal agencies with expertise in health and safety issues. The FCC has created guidelines for human exposure to RF fields. Specifically, the Act states, "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."

The wireless communication facility will be required to comply with all applicable FCC standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic frequency radiation. The Electromagnetic Energy (EME) Exposure Report prepared by Occupational Safety & Compliance Engineering Inc. dated July 19, 2018 indicates that the project would operate within the allowed maximum RF limits per the FCC standards.

Riparian Corridor Policies. The project site is located approximately 45 feet north of the nearest riparian canopy (Guadalupe Creek) as identified by the Biological Resources Assessment Report prepared by Rincon Consultants on January 21, 2019. The Biological Resources Assessment found that there is no reasonable alternative which avoids or reduces the encroachment into the setback area. The project would replace existing utility structures within the same footprint. The reduced setback will not significantly reduce or adversely impact the riparian corridor as project activities will only impact existing developed areas. The Assessment found that there is no evidence of stream bank erosion or previous attempts to stabilize the stream banks which could be negatively affected by the proposed development. The project would not require trimming or removal of any riparian vegetation and all ground-disturbing activities would occur at a minimum 45 feet from the riparian canopy. The project would not increase the amount of impervious area on the project site, and therefore poses no additional threat from erosion to downstream resources.

Cultural Resources. A Cultural Resource Investigation was conducted at the subject site on January 31, 2020 by Cogstone Resource Management. The study was conducted in accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966. There were no cultural resources identified within or near the Area of Potential Effects (APE) during the cultural resources site visit. No known cultural resources within or near the APE would be affected by the proposed alteration to the existing telecommunications facility. No historical archeological sites have been recorded within one-half mile of the candidate location.

8. Demolition or Removal of Buildings

San José Municipal Code 20.80.420 defines "demolition" as the removal of more than fifty percent of the exterior walls of a building. The project proposes the removal of the existing wireless wood pole and associated equipment.

Pursuant to the Section 20.80.460 of the San Jose Municipal Zoning Code, prior to the issuance of any Development Permit which allows for the demolition, removal or relocation of a building, the Director, or on appeal the Planning Commission or City Council, shall

determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following shall be considered:

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
- e. Both inventoried and non-inventoried Buildings, Sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing Building would not be feasible; and
- g. The demolition, removal or relocation of the Building without an approved replacement Building should not have an adverse impact on the surrounding neighborhood; and
- h. The permit applicant has provided evidence that either the existing Building or Structure is not a Multiple Dwelling or Mobile Home Park or that the permit applicant has complied with all relocation obligations under state and local law, including but not limited to the obligations in Chapters 17.29, 17.23 and 20.200 of the Municipal Code.

Analysis: The demolition of the existing wood pole and associated equipment would facilitate the construction of a new wood pole with associated equipment for the continued use of the site as a wireless communications facility. The project would address existing deficiencies including upgrading aging equipment by installing new, more efficient equipment and would be consistent with the goals and policies of the General Plan and the Zoning District, as noted above. The demolition would not result in a nuisance, blight, or dangerous condition as the demolition would allow for the construction of updated wireless communications facilities. The site has no historical significance and no residential units would be demolished.

9. **Conditional Use Permit Findings:** Section 20.100.720 of the San José Municipal Code specifies the required findings for the approval of a Conditional Use Permit.

- a. The Conditional Use Permit, as approved, is consistent with and will further the policies of the general plan, applicable specific plans and area development policies; and

Analysis: As described above in the General Plan Conformance section, the project is consistent with the site's Public/Quasi-Public Land Use designation, as well as Telecommunication Goal IN-6 and Policy IN-6.1 and Community Design Policy CD-4.12. The project facility would provide state-of-the-art wireless telecommunication services to consumer and business customers by providing next generation data products thereby supporting the above Goal, including enhanced network connections without interruption, high speed internet for a better overall network experience. The project would enhance the area's public safety infrastructure by providing wireless communication services to area residents, surrounding neighborhood businesses and the local community.

- b. The Conditional Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and

Analysis: As described above, the project complies with the applicable development standards of the San José Municipal Code. The project and subject site meet the necessary parking, height, and setback standards. The site is set back approximately 214 feet from the nearest street and approximately 280 feet from the nearest residential area to the east. Section 20.85.030 of the Zoning Code allows a maximum height of 150 feet for wireless communication antennas. The maximum height of the wireless wood pole is 45 feet. One parking space is required for each wireless communications facility and one parking space is provided as shown on the site plan.

- c. The Conditional Use Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and

Analysis: As discussed above, the project is consistent with City Council Policy 6-20 in that an Alternatives Analysis was provided and concluded that a wireless communication facility at the project site would improve the quality of wireless service coverage in the area. The analysis considered multiple alternative sites for wireless colocation located within a ¼ mile radius of the existing site. The only location that would meet the height requirements for service was the existing PG&E transmission towers adjacent to the substation to the east. However, the transmission towers would be located within 20 feet of residential properties and would increase visibility of the wireless facility within the neighborhood. The alternatives analysis also considered possible building mounted locations; however, there were no locations within the ¼ mile radius that would meet the height requirements for service.

As discussed above, the project is also consistent with the Riparian Corridor Council Policies. The project site is located approximately 45 feet north of the nearest “riparian habitat” as identified by the Biological Resources Assessment Report prepared by Rincon Consultants with input by Geist Engineering and Environmental Group on January 21, 2019. The Biological Resources Assessment found that there is no reasonable alternative which avoids or reduces the encroachment into the setback area. The project would replace existing utility structures within the same footprint. The reduced setback will not significantly reduce or adversely impact the riparian corridor as project activities will only impact existing developed areas. The assessment found that there is no evidence of stream bank erosion or previous attempts to stabilize the stream banks which could be negatively affected by the proposed development. The project would not require trimming or removal of any riparian vegetation and all ground disturbing activities would occur at a minimum 45 feet from the riparian canopy. The project would not increase the amount of impervious area on the project site, and therefore poses no additional threat from erosion to downstream resources.

The project was duly noticed per Council Policy 6-30: Public Outreach Policy for pending land use and development proposals and on-site noticing/posting requirements. A project information sign was posted on site since June 18, 2020 and a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site.

d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area;
- ii. or Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety or general welfare; and

Analysis: For purposes of contextual analysis as described below, the project site is surrounded by residential uses to the west, a school and baseball fields to the north, transmission lines to the east, and Guadalupe Creek to the south. The wireless wood pole would be located within an existing PG&E substation. The subject property is adequately screened from the nearby uses described above, through existing trees and vegetation as well as perimeter fencing with privacy slats on all sides of the site. Furthermore, the wireless wood pole would be minimally visible from the street as it would be set back approximately 214 feet from Singletree Way. The pole would not be visible from any residential areas as it would be set back 280 feet from the nearest residential property to the east. The project would allow for the continued use of the wireless communication facility. The site has existed as a wireless communications facility since 2000. The project would not result in the intensification of the wireless use and would therefore not adversely affect the surrounding area, impair the value of property or person in the area, or be detrimental to the peace, health, safety, morals or welfare of persons in the area. Furthermore, the wireless communication antenna and associated equipment will not adversely impact the public health, safety or general welfare in that the project will conform to the FCC standards, pursuant to the Telecommunications Act of 1996.

e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding area; and

Analysis: The monopole would be located on an approximately 4.19-gross acre site within an existing PG&E substation. The site has existed as a wireless communications facility, with an existing wireless wood pole and associated equipment, since 2000. The site has adequate space to accommodate the monopole antenna and all associated equipment. One required parking space would be provided on site for maintenance purposes.

f. The proposed site is adequately served:

- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- ii. By other public or private service facilities as are required.

Analysis: The site is accessible from Singletree Way. As the project the site is located within an existing PG&E Substation, pedestrian access is restricted and only authorized personnel are allowed on the premises. The use would not generate any additional traffic.

g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of

the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: The wireless communication antenna project is screened with trees, shrubs, and perimeter fencing with privacy slats around the site and would result in no visual impacts due to its distance from both residential and non-residential uses. The project does not propose any noise generating equipment or odor generating activities. No new impervious surface would be created; therefore, the project would not result in any impacts on drainage, erosion, or stormwater runoff. Construction would not have an unacceptable negative effect from vibration, dust, drainage, erosion, stormwater runoff and odor on adjacent property or properties and would be limited to between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. The project facility will also be required to comply with all applicable FCC standards, including the Telecommunications Act of 1996 with regards to the emission of electromagnetic radio frequency (RF) limits.

10. **Site Development Permit Findings:** Section 20.100.630 of the San José Municipal Code specifies the required findings for the approval of a Site Development Permit.

In order to make the Site Development Permit findings pursuant to San José Municipal Code Section 20.100.630, the Planning Commission must determine that:

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.

Analysis: See Section 8.A of the Conditional Use Permit Findings above.

- b. The Site Development Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.

Analysis: See Section 8.B of the Conditional Use Permit Findings above.

- c. The Site Development Permit, as approved, is consistent with applicable City Council Policies or counterbalancing considerations justify the inconsistency.

Analysis: See Section 8.C of the Conditional Use Permit Findings above.

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

Analysis: The project site is located within an existing 4.19-gross acre PG&E Substation. The wireless wood pole would be located in a previously disturbed area of the site and would blend well with the existing substation equipment on site. Therefore, the wireless monopole use would be mutually compatible and aesthetically harmonious.

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

Analysis: The subject site is surrounded by a residential area to the west, a school and baseball fields to the north, transmission lines to the east, and Guadalupe Creek to the south. The site is well landscaped with trees and shrubs planted along the perimeter of the site and is further screened by an existing chain link perimeter fence with privacy slats. The wireless wood pole is set back approximately 214 feet from Singletree Way and would be minimally visible from the street. The wood pole would be approximately 45 feet high and would be significantly lower

than existing PG&E equipment on-site as well as the transmission towers to the east of the site. Therefore, the orientation, location, and elevation of the wireless wood pole would be compatible with an aesthetically harmonious with the adjacent development.

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

Analysis: See Section 8.G of the Conditional Use Permit Findings above.

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

Analysis: The wireless facility is located on an approximately 4.19-gross acre site that has trees, vegetation, and fencing on the perimeter. The landscaping and fencing would adequately conceal the use from adjacent properties.

- h. Traffic access, pedestrian access and parking are adequate.

Analysis: Vehicular access to the site is from the entrance to the substation on Singletree Way. The project provides one vehicle parking space. As the site is located within an existing PG&E substation, public access is restricted.

In accordance with the findings set forth above, a Conditional Use Permit and Site Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This Planning Commission expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the permittee fail to file a timely and valid appeal of this Conditional Use Permit and Site Development Permit (collectively "Permit") within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Permit by the permittee; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** This Conditional Use Permit shall automatically expire five (5) years from and after the date of issuance hereof by the Planning Commission, if within such time period, a Building Permit (for foundation or vertical construction) has not been obtained or, if no Building Permit is required, the use has not commenced, pursuant to and in accordance with the provisions of this Permit. The date of issuance is the date this Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve

a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this Conditional Use Permit shall be deemed acceptance of all conditions specified in this Permit and the Permittee's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Use Authorization.** Subject to all conditions herein, this Permit allows the demolition of the existing wireless wood monopole and associated equipment and the construction of a new wireless wood monopole and associated equipment, and allows the operation of the site as a Wireless Communication Facility.
5. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by permittee shall constitute acknowledgement of receipt of notice by permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Facility will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
6. **Conformance to Plans.** The development of the site and all associated development and improvements shall conform to the approved Permit plans entitled, "LTE 3C, 4C, 5C, 6C 4TXRX Antenna Retrofit" dated February 13, 2020, on file with the Department of Planning, Building and Code Enforcement, as may be amended and approved by the Director of Planning, Building, and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24). The plans are referred to herein as the "approved plans" or the "Approved Plan Set".
7. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
8. **Compliance with Local, State, and Federal Laws.** The subject use shall be conducted in full compliance with all local, and, state, and federal laws.
9. **Discretionary Review.** The City maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.

10. **Discontinuation of Wireless Use.** Upon discontinuation of the use of the subject antennas, the permittee shall remove all antenna improvements and related equipment/enclosures associated with this Permit within thirty (30) days and restore the site to its original condition.
11. **Compliance with Federal Communication Commission Standards.** The wireless communication facility shall comply with all applicable Federal Communications Commission (FCC) standards with regards to the emission of electromagnetic frequency radiation.
12. **Noise Control.** Maximum noise levels emanating from the generator or the equipment enclosure shall not exceed 55 decibels at the adjacent residential property lines.
13. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
15. **Utilities.** All new on-site telephone, electrical, and other service facilities shall be placed underground.
16. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
18. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
19. **Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
20. **Lighting.** No new on-site lighting is approved with this permit.
21. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
22. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **Fire Safety.** The permittee shall meet all requirements of the Fire Department at the Building Permit stage, including but not limited to the maximum occupancy of the facility.

25. Revocation, Suspension, Modification. This Conditional Use Permit and Site Development Permit may be revoked, suspended or modified by the Planning Commission, or the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit or Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved.

APPROVED and issued this **26th day of August, 2020**, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MARIEL CABALLERO
Chairperson

ATTEST:

ROSALYNN HUGHEY, Director of Planning,
Building & Code Enforcement
Planning Commission Secretary

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.